IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

MFA.No. 587 of 2002(B)

WCC.218/1998 of W.C.C., KANNUR
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APPELLANT: APPELLANT/2ND OPPOSITE PARTY:

THE NEW INDIAS ASSURANCE COMPANY LTD.,
REPRESENTED BY ITS DEPUTY MANAGER,
REGIONAL OFFICE, M.G. ROAD, KOCHI-11.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS: RESPONDENTS/APPLICANTS & 1ST OPPOSITE PARTY:
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1. THANKA, W/O. THE LATE MANI,
SUGANDHAGIRI, VYTHIRI.

2. P.V. GOPI, S/O. THE LATE MANI,
SUGANDHAGIRI, VYTHIRI.

3. P.V. VALSA RAJAN, S/O. THE LATE MANI,
SUGANDHAGIRI, VYTHIRI.

4. P.V. SANTHOSH, S/O. THE LATE MANI,
SUGANDHAGIRI, VYTHIRI.

5. THE MANAGING DIRECTOR,
SUGANDHAGIRI CARDOMAM PROJECTS,
SUGANDHAGIRI, VYTHIRI.

BY ADV. SRI.P.C.SASIDHARAN FOR R5
SRI.V.M.KURIAN(JR.)
SRI.T.KURIAKOSE PETER FOR R1 TO R4
SRI.ABRAHAM P.GEORGE FOR R1 TO R4

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MFA.587/2002

ORDER ON C.M.P.2448/2002 IN M.F.A.587/2002

DISMISSED.

6.9.2007 **J.B.KOSHY,JUDGE**

K.HEMA,JUDGE

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.587 OF 2002 (B)

Dated this the 6th day of September, 2007

J U D G M E N T

KOSHY,J.

This appeal is filed by the Insurance company against the award of the Commissioner in allowing the application filed by the dependents of the deceased workman. According to the applicant, the deceased Mani was a workman employed as general worker under the Opposite Party I. The Opposite Party I had validly insured the workers of the estate with the Opposite Party II at the relevant time of accident. The deceased had sustained personal injury arising out of and in the course of his employment. On 20.6.1997, the deceased workman fell sick during the course of his work and that resulted his death on 10.11.1997. The cause of injury was stress and strain in the employment and he was having hypertension and was under treatment. According to the Insurance company, no accident was reported on 20.6.1997.

There is no connection with the death and employment. Exts.A1 and A2 are treatment certificates and prescriptions. Exts.A4 and A5 are medical bills. Ext.A3 is the medical certificate. No evidence was adduced to show that any accident occurred on 20.6.1997 and that injury caused his death after about five months. It was also stated that on 20.6.1997, an injury occurred to his leg. But no wound certificate was produced. He deposed that after 20.6.1997, he was under treatment for high blood pressure. He died of renal failure. There is no evidence that blood pressure was caused or occurred due to stress and strain of the work. It is not declared as an occupational disease. There is no medical evidence supporting such plea. To get compensation under the Workmen's Compensation Act, it shall be proved that personal injury was sustained by the worker in the course of employment and during the course of employment. Hence there is no proof that an accident occurred during the course of employment and renal failure or hypertension has got any connection with the employment. In these circumstances, we refer to the decision of the Apex Court in ***Jyothi Ademma v.***

Plant Engineer, Nellore and another (AIR 2006 S.C 2830). Hence we allow the appeal and set aside the order of the Commissioner. However, we note that applicant was very poor. Even though daily wages claimed was only Rs.53.75 per day, part of the amount was already disbursed. It will be very difficult to realise that from the dependents of the deceased. Therefore, on the facts of the case, we direct that amount already disbursed shall not be realised from the dependants. Excess amount in deposit shall be refunded to the Appellant Insurance company. Appeal is allowed accordingly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.587 OF 2002 (B)

J U D G M E N T

6th September, 2007